

### **REMARKS**

Claims 1-31 are pending in the application.

Claims 1, 5, 12, 16-19, 21, 22, 25-28 stand objected to.

Claims 1-4, 6-12, and 17-31 stand provisionally rejected under nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of copending U.S. Application No. 10/510,247 in view of Passut et. al, DE 197 35 431.

Claims 7-10 stand rejected under 35 U.S.C. § 112 second paragraph as being indefinite.

Claims 1-15, 17, 18, 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crockatt et al, U.S. 4,681,910 ("Crockatt"), in view of Isozaki et al, US 6,358,438 ("Isozaki").

Claim 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Crockatt et al, U.S. 4,681,910 ("Crockatt"), in view of Isozaki et al, US 6,358,438 ("Isozaki") and further in view of Passut.

In this paper, claims 1-18 and 24-25 are canceled without prejudice to pursue those or other claims in a continuation application. Claims 19 and 26 have been amended to rewrite the claims in independent form and incorporate limitations from the claims from which they depend. Dependent claims 20-23 and 27-31 have been amended to address the objections to the claims and to clarify the claims. No new matter is added.

The Examiner has indicated that claims 19 and 26 are free of the prior art. Accordingly, claims 19 and 26 have been rewritten in independent form and amended to remove the objections to the claims. Dependent claims 20-23 and 27-31 have been amended as necessary to address the objections to these claims, and they are patentable over the cited art for at least the same reasons as claims 19 and 26.

### **Double Patenting**

Claims 19-23 and 27-31 stand provisionally rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-16 of co-pending application U.S. Patent Application 10/510,247 in view of Passut et. al, DE 197 35 431.

Passut describes a composition comprising 10-30 wt.% of an aqueous plasticizer-free butylacrylate copolymer dispersion, 1-10 wt.% water glass solution, 0.1 to 2.0 wt.% defoaming agent, 0.2-4.0 wt.% thixotropic agent, 0.1-10 wt.% micronised polyethylene wax, and 88.6-44.0

wt.% water. The composition of Passut is entirely different from the composition described in U.S. Patent Application 10/510,247. The Examiner states that it would be obvious for one skilled in the art to select certain elements of the composition described in Passut and combine those selected elements with the composition described in U.S. Patent Application 10/510,247 to arrive at the composition recited in the claims as amended. However, the composition of Passut does not include a hydrocarbon oil or an ester-containing oil as recited in the claims as amended and in U.S. Patent Application 10/510,247. There is nothing to lead one skilled in the art to expect success in producing a composition for curing mortar or concrete by adding the components selected from Passut with the paraffin wax, hydrocarbon oil and ester-containing oil composition recited in the claims as amended. Accordingly, the rejection of claims 19-23 and 26-31 for non-statutory obviousness type double patenting is improper and should be withdrawn. In order to expedite prosecution of this application, however, if this is the sole remaining grounds for rejection, applicant will file a terminal disclaimer.

All other grounds for rejection in the Office Action are rendered moot by the cancellation of claims 1-18 and 24-25.

The foregoing is believed to be fully responsive to this office action. The present invention is believed to be allowable over the prior art of record. Consideration and allowance of the claims is respectfully requested.

If the Examiner believes that a telephone conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned. If the Examiner has any questions in connection with this paper, or otherwise if it would facilitate the examination of this application, please call the undersigned at the telephone number below.

Applicant believes that no fees are due in conjunction with submission of the current response. If, however, any required fee has been inadvertently overlooked, Commissioner is hereby authorized to debit any required fee or credit any overpayment to Deposit Account No. 50-3569.

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Respectfully submitted,



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